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Supreme Court of the United States,

OCTOBER TERM, 1906.

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No. 72.

TOMAS GARROZI, JUANA MARIA GONZALEZ AND DOMINGO PIAZZI,

Appellants,

vs.

JUANA DASTAS,

Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

ADDITIONAL BRIEF ON BEHALF OF APPELLANTS ON QUESTION OF JURISDICTION OF THE COURT BELOW.

FRITZ v. BRIESEN,
Of Counsel for Appellants.

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This additional brief is intended to consider the question of the jurisdiction of the court below more fully than it has been considered in the main brief.

For the convenience of the Court a chronological table of the main facts and pleadings is here given:

CHRONOLOGICAL TABLE.

May 12, 1886.—Marriage of Thomas Garrozi and Juana D. Dastas. No special marriage contract (Rec., p. 1).

Nov. 28, 1898.—Separation in fact of spouses, without judicial intervention (Rec., p. 104).

May 21, 1901.—Thomas Garrozi files suit for divorce against Juana Dastas, in District Court of Ponce (Rec., p. 5).

July 15, 1901.—District Court of Ponce awards Juana Dastas $75 a month alimony and $598 counsel fees (Rec., p. 93).

Oct. 4, 1901.—Juana Dastas files bill in District Court of Ponce against Thomas Garrozi, Domingo Piazzi and Juana Maria Gonzales, alleging the facts above stated regarding the marriage, separation in fact, beginning of divorce suit, and order for alimony and counsel fees, and alleging further:

> That at the time she left her husband he was possessed of certain property, consisting of real estate and mortgage credits (Rec., pp. 1-2).
>
> That at various times he disposed of all his property in defraud of creditors, for no consideration, some to the defendant Juana Maria Gonzales, and some to the defendant Domingo Piazzi (Rec., pp. 2-4).

That he is now insolvent (Rec., p. 5). The relief prayed for is the nullification or, *ad cautelam*, the rescission of the deeds and transfers of Thomas Garrozi's property (Rec. p. 7) and the payment of the expenses of this suit (Rec., p. 8).

Jan. 15, 1902.—Garrozi files petition for removal to United States District Court for Porto Rico, alleging that he is a citizen of France, and that therefore his wife, the complainant, is also a citizen of France.

Feb. 26, 1902.—The defendants file their answer in the United States District Court, admitting the allegation relative to the property, but denying that the transfers were without consideration and in fraud of creditors, and alleging that the property referred to in the bill was bought by Garrozi with money owned by him before his marriage, or with money received by him for property owned by him before his marriage (Rec., pp. 15–16).

March 12, 1902.—Defendant Juana Maria Gonzales files her petition for removal in the District Court of Ponce, alleging that the complainant is a citizen of France, and the petitioner a citizen of Porto Rico (Rec., p. 20).

March 12, 1902.—Defendant Domingo Piazzi files his petition for removal in the District Court of Ponce, alleging that the complainant is a citizen of France and the petitioner a citizen of France and resident of Corsica (Rec., p. 21).

March 15, 1902.—Motion to remand is made by complainant, on ground that the petition for removal fails to aver that the defendant Garrozi is a non-resident. This motion is denied, on the ground that the petition states that the defendant, Garrozi is a citizen of France hence an alien, and hence, presumably, a non-resident (Rec., p. 19).

April 7, 1902.—Complainant files, in the United States District Court, a "Reformed Bill of Complaint," setting up substantially the same facts set up in the original bill in the Insular Court, but adding a statement to the effect that the suit for divorce was decided in favor of complainant, and is now pending and undecided on appeal in the Supreme Court of Porto Rico; and adding a new cause of action, praying that "your orator may be decreed to be owner of one-half the aforesaid properties and mortgages" (Rec., pp. 23–27). A new defendant, Quintin Ramirez, is added, but he is

afterwards dropped from the case by stipulation (Rec., p. 60).

May 12, 1902.—Answer to "Reformed Bill of Complaint" filed (Rec., p. 30).

June 9, 1902.—Supreme Court of Porto Rico reverses decision in divorce suit, and grants absolute divorce to Garrozi for his wife's adultery (Rec., p. 108).

May 1, 1904.—Complainant moves to amend bill by setting forth the granting of absolute divorce, and praying for the appointment of a Master to take an account of the community property (Rec., pp. 36-37). This motion is granted (Rec., p. 41).

April 11, 1904.—Defendants amend answer by alleging that the divorce was granted for the adultery of the complainant (Rec., pp. 42-43).

Oct. 3, 1904.—Special Master is appointed to report findings of law and fact (Rec., pp. 50-51), testimony, taken before a Special Examiner, having already been filed September 26, 1904 (Rec., p. 47).

Oct. 18, 1904.—Complainant files motion to amend the bill (Rec., p. 51). This motion is referred to the Special Master (Rec., p. 55), who renders his report (Rec., p. 56). The amendments are allowed (Rec., p. 59), and on

Oct. 29, 1904.—Complainant accordingly files her amended bill of complaint (Rec., p. 60), in which certain transfers of the property are set up, either not known to the complainant at the time of the filing of the original bill, or occurring after the filing of such bill (see "Motion for leave to withdraw application and to amend" (Rec., p. 58). In this bill particular reference is made to "*the fraudulent design, combination and collusion existing between defendants Garrozi, Domingo Piazzi and Juana Maria Gonzales to defraud your oratrix*" (see Amendment IX., Rec., p. 54; also Amended Bill, Rec., p. 63, beginning of paragraphs one, three and four).

Nov. 3, 1904.—Defendants file plea, alleging that under the law of Porto Rico the complainant, being the guilty party in the divorce action, has no right to sue for a portion of the community property (Rec., p. 68). An answer is filed the same day, denying fraud and collusion (Rec., p. 69).

Nov. 14, 1904.—The plea is withdrawn, but allowed to stand as a part of the answer (Rec., p. 75).

April 8, 1905.—The Special Master submits finding of fact and law (Rec., p. 78). Exceptions are filed by both sides (Rec., pp. 85, 86), but these are overruled (Rec., p. 89).

April 19, 1905.—Final decree entered (Rec., p. 89). The Court finds that there is due to the complainant, as her share of the partnership property, the sum of $13,750. It finds that the transfers of the property are fraudulent and void and orders them canceled. It gives judgment for the sum of $13,750, and also for $500, fee of Special Master, and also for $400, fee of Special Examiner.

April 20, 1905.—Order entered, ordering defendant Garrozi to pay the alimony and counsel fees awarded by the District Court of Ponce in the divorce litigation, and also counsel fees, $1,500, for services of complainant's attorney in the present case.

On November 7, 1904, the Court had appointed a receiver to take charge of all the property referred to in the complaint (Rec., p. 128). After the appeal bond for $25,000 had been filed the defendants moved for a discharge of the Receiver on the ground that the appeal bond was a sufficient security for the complainant (Rec., p. 130). This motion was denied (Rec., p. 131), and a receiver is still in charge of the property.

A finding of facts by the Court is printed at page 108 *et seq.* of the record. In finding 24 (Rec., p. 112) the Court states that $47,000, spent by the de-

fendant Garozzi, during four trips to Europe, between 1889 and 1898, one visit apparently lasting two years, was an excessive amount. It finds that $22,000 should be charged against the separate estate of the defendant Garozzi. One-half of this amount, or $11,000, is added to one-half the sum of $5,500, or $2,750, found by the Special Master to be the value of the community property (Rec., p. 84), and the total, $13,750, constitutes the amount of the judgment.

ARGUMENT.

The following points will be argued in this brief:

I.—This Court has jurisdiction of this case on appeal.

II.—The United States District Court for Porto Rico had no jurisdiction to hear, try or determine this case.

III.—The United States District Court for Porto Rico had no jurisdiction to render a decree relating to the separation of the community property.

POINT 1.

This Court has jurisdiction of this case on appeal.

The amount of the judgment is more than $5,000 (Rec., pp. 91–93). In *Royal Insurance Company* vs. *Martin*, 192 U. S., 149, 161, it was held that this Court has jurisdiction in appeals and writs of errors coming from Porto Rico "in every case, without regard to the sum or value in dispute, where the Constitution of the United States or a treaty thereof or any Act of Congress is brought in question and

the right claimed thereunder is denied, *and in every other case where the sum or value in dispute exceeds $5,000 exclusive of costs.*"

POINT 2.

The United States District Court for Porto Rico had no jurisdiction to hear, try, or determine this case.

The suit was not originally begun in the United States District Court, but was brought into that court by removal from the District Court of Ponce (Rec., p. 1).

In order that the United States District Court should have had jurisdiction in this case, it was necessary to show not merely that the Court might have had jurisdiction if the action had been begun by its own process, but that the law authorized the removal of the case.

Encyclopedia of Pleading and Practice, Vol. 18, Title, Removal of Causes, page 159:

> "The fact that a federal Circuit Court may have original jurisdiction of a case is not sufficient to justify a removal. The right of removal is wholly statutory and cannot be exercised unless by virtue of some provision in an act of Congress."

Same, page 366:

> "An act of Congress (1875; 18 Stat., 472, Sec. 5,) requires the Circuit Court to remand or dismiss a suit removed from a State court whenever it shall appear that the court has no jurisdiction thereof, or that parties have been collusively joined for the purpose of removal. *There is a lack of jurisdiction.* within the meaning of the statute, whenever the record fails to show a ground for removal,

> or when it is made to appear that none exists, or when the proceeding is not of such a nature as to be removable on any ground."

Black's Dillon Removal of Causes, § 13:

> "The intention of the Removal Act of 1887 to restrict removals of cases from state courts to federal courts, and to limit the jurisdiction of the latter courts in such cases is perfectly plain."

Same, § 220:

> "If the question is not as to any mere defect or informality in the proceedings, but goes to the substantive right of removal (in otner words, the jurisdiction of the Federal Court), the rule is altogether different. Such objections cannot be waived by a party, nor can his consent confer on the federal court a jurisdiction which it would not otherwise possess."

To the same effect is the decision in *Martin* vs. *Snyder*, 148 U. S., 663.

By Sec. 34 of the Foraker Act (Act of April 12, 1900, Ch. 191, 31 Stat. L., 77, 84) it is provided that:

> "The laws of the United States relating to appeals, writs of error and certiorari, *removal of causes*, and other matters and proceedings as between the courts of the United States and the courts of the several States shall govern in such matters and proceedings as between the district court of the United States [for Porto Rico] and the courts of Porto Rico."

The same section confers upon the United States District Court for Porto Rico all the powers of a circuit court as well as of a district court.

The law which confers jurisdiction upon the United States Circuit Court by removal from a State court is found in Section 2 of the Act of March 3, 1875, Ch. 137, as amended by Act of March 3,

1887, Ch. 373, Sec. 1, and Act. of August 13, 1888, Ch. 866, Sec. 1 (see *Federal Statutes Annotated*, Vol. 4, p. 312, Tit. "Judiciary"). So much thereof as is pertinent to the present controversy is here given:

> "That any suit of a civil nature, at law or in equity, arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, of which the circuit courts of the United States are given original jurisdiction by the preceding section, which may now be pending, or which may hereafter be brought, in any State court, may be removed by the defendant or defendants therein to the Circuit Court of the United States for the proper district. *Any other suit of a civil nature, at law or in equity, of which the circuit courts of the United States are given jurisdiction by the preceding section, and which are now pending, or which may hereafter be brought, in any State court may be removed into the Circuit Court of the United States for the proper district, by the defendant or defendants therein, being non-residents of that State.* And when in any suit mentioned in this section there shall be a controversy which is wholly between citizens of different States, and which can be fully determined as between them, then either one or more of the defendants actually interested in such controversy may remove said suit into the Circuit Court of the United States for the proper district." * * *

By the "preceding section" referred to in the statute just quoted, it is provided (Act of March 3, 1875, Ch. 137, 18 Stat. L., 470, Sec. 1, Federal Statutes Anotated, Vol. IV., p. 65):

> "That the Circuit Court of the United States shall have original cognizance, concurrent with the courts of the several States, of all suits of a civil nature, at common law or in equity, where the matter in dispute exceeds, exclusive of interest and costs, the sum

> or value of two thousand dollars, and arising under the constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or in which controversy the United States are plaintiffs or petitioners, or in which there shall be a controversy between citizens of different States, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid, or a controversy between citizens of the same State claiming land under grants of different States, or a controversy between citizens of a State and foreign States, citizens, or subjects, in which the matter in dispute exceeds, exclusive of interest and costs, the sum or value aforesaid." * * *

The present suit does not fall within the first sentence of Section 2, above quoted, of the Removal Act, as it does not arise under the Constitution, a law of the United States, or a treaty. It follows, therefore, that, in order that the Court below could have had jurisdiction upon removal, two factors must be present:

1. It must be a suit of which the circuit courts "are given jurisdiction by the preceding section."
2. The defendants must be non-residents (provided there be no separable controversy).

It may suffice to say that the defendants are not all of them non-residents. The defendant Juana Maria Gonzales is alleged in the original bill to be a resident of Yauco [Porto Rico] (Rec., p. 1). In her petition for removal she alleges that she is a citizen of Porto Rico (Rec., p. 21).

> Encyclopedia of Pleading and Practice, Vol. 18, Title, Removal of Causes, p. 275:
>
> "It has been held that unless all the defendants are non-residents of the State in which the suit is brought, it is not removable by any of them, although all are citizens of different States from the plaintiff.

It has often been held that all the defendants must be non-residents in order to remove.

Parkinson *v.* Barr, 105 Fed. Rep., 81–83, and cases there cited.

It follows that the present suit could not properly have been removed unless there was a separable controversy.

While in the original bill it is alleged that the property mentioned under rubrics A and B of Part 2 was transferred to the defendant Juana Maria Gonzales (Rec., p. 2) and the property mentioned under C, D, E and F of Part 2, was transferred to the defendant Domingo Piazzi, the essence of the action is the alleged fraud and conspiracy of the defendants in transferring or accepting all of Garozzi's property (worth $150,000, Rec., p. 4, fol. 7. 6), in order to make it impossible for his wife to collect a judgment of less than $1,000 (Rec., p. 5, fol. The transfer of any one of the parcels could not have been fraudulent. It was the stripping himself bare of all property that can alone form a basis for the charge of fraud.

The inseparable nature of the controversy is conclusively shown by the allegations in the "Amended Bill of Complaint," Rec., p. 63:

> "*And your oratrix avers that, in pursuance of the fraudulent design, combination and collusion existing between defendants Garrozi, Domingo Piazzi and Juana Maria Gonzalez, to defend your oratrix,*" &c. This statement appears three times on page 63.

Even if it had been a separable controversy, the suit would not have been removable, as the same could only have been separated into a suit between Juana Dastas as complainant, and Garozzi and Piazzi as co-defendants, and a suit between Juana Dastas as complainant, and Garozzi and Juana Maria Gonzales as co-defendants. In either case the plaintiff would have been an alien (Rec., pp. 14, 21, 22), and the defendant Garozzi would have been

an alien, and the suit would not have been "between citizens of different States," the only kind of suit which is removable because of separate controversy (Sec. 2 of Act of 1875, above quoted p. 9).

It has already been stated (Brief, p. 10) that it is not sufficient to authorize removal, that all the defendants be non-residents, but the suit must also be such in which jurisdiction has been given by Section 1 of the Removal Act. Now, Section 1 of the Romoval Act would not give the Court jurisdiction in a case like the present, which is between a citizen of France on the one side and two citizens of France and a citizen of Porto Rico on the other.

Original jurisdiction has been given to the United States District Court for Porto Rico to hear and determine such a case by an act later than the Foraker Act.

> Act of March 2, 1901, Ch. 812; 31 Stat. L., 953, Sec. 3:
>
> > "That the jurisdiction of the District Court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the Act of April twelfth, nineteen hundred, extend to and embrace controversies where the parties, or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of one thousand dollars."

While, therefore, the Court below might have had jurisdiction of this suit if it had originally been brought therein, it had no jurisdiction on removal. Such a construction of the Act of 1891 cannot be presumed as it is not warranted by the express words of the statute or by necessary implication.

> Am. & Eng. Encyl. of Law, Vol. 26, Tit. "Statutes," p. 615; note:
>
> > "Nor will a construction be adopted which enlarges the jurisdiction of courts in the ab-

sence of express words or necessary implication."

Ex parte Story, 3 Q. B. D., 166.
Kite's Case, 1 B. & C., 107."

It follows that the United States District Court for Porto Rico had no jurisdiction to determine this suit, and that the suit should be remanded to the District Court for Ponce.

The fact that the defendants-appellants themselves removed the case to the United States District Court did not give that court jurisdiction.

Encyclopedia of Pleading and Practice, Vol. 18, Title, Removal of Causes, p. 369:

> "It is immaterial who makes a motion to remand. * * * When it is based upon a strictly jurisdictional defect the cause must be remanded though the motion be made by the petitioner for removal."

Same, page 375:

> "There are some objections that are waived if not taken by a motion to remand. But where the objection is jurisdictional, and cannot be waived, it is the duty of the Court to take notice thereof and remand the cause of its own motion, and the Circuit Court of Appeals or the Supreme Court on appeal or error after final decree or judgment, will reverse the same and order the cause to be remanded, though no objection be taken in the court below or in the appellate court."

Martin *vs.* Snyder, 148 U. S., 663:

> "Under the Act of Congress of March 3, 1887, 24 Stat. L., 552, Ch. 373, it is the defendant or defendants who are non-residents of the State in which the action is pending who may remove the same into the Circuit Court of the United States for the proper district. The defendants here were not entitled to such removal, and the decree, which was in favor

of complainants and from which the defendants prosecuted this appeal, must be reversed for want of jurisdiction, with costs against the appellants, and the case remanded to the Circuit Court with direction to render a judgment against them for costs in that Court, and to remand the case to the State Court."

POINT 3.

The United States District Court for Porto Rico had no jurisdiction to render a decree relating to the separation of the community property.

The decree, in Section I. (Rec., p. 60), sets forth:

> "The Court finds, orders and decrees that there is due to complainant Juana Dastas, by defendant Thomas Garozzi y Pietri, from and by reason of the conjugal society or partnership existing between the said complainant and the said defendant Thomas Garozzi, during the existence of the marriage between them since the twelfth of May, 1886, until the date of the divorce between them on the ninth of June, 1902, the sum of thirteen thousand seven hundred and fifty dollars ($13,750) which said sum is a charge and lien against the properties and mortgages hereinafter described."

In other words, the Court, upon the petition of Juana Dastas, the wife, declared a separation of the community property to which, it was alleged, she was entitled by reason of her marriage with the defendant Garrozi.

Under the Spanish law all such property as has been acquired by husband and wife during their marriage, by their labor or industry, or by pur-

chase, is termed community (*ganancial*) property, and is deemed the joint property of the spouses.

Ballinger on Community Property, § 5, "Spanish Community or Ganancial System," gives a full statement of the Spanish law relating to community or ganancial property. On page 25 he says:

> "Escriche comprehensively defines *ganancial* property to be whatever the husband and wife acquire during the marriage, and while living together, by a joint lucrative or onerous title, or that which the husband and wife or either of them, during the marriage or while living together acquire by purchase or by means of their labor or industry; as also the fruits of their separate property which each brings to the marriage; and of that which either acquires for himself by any lucrative title, whilst the conjugal society subsists. It is the common property of the husband and wife, and belongs the half to each of them, although the husband has more separate property than the wife or the wife more than the husband, although one, after marriage, acquires more than the other, and although it may be one alone who by commerce or toil accumulates the property."

The law in Porto Rico is the same. See for instance the following sections of the Civil Code in force in Cuba, Porto Rico and the Philippines, War Department translation:

> ART. 1392: By virtue of the conjugal partnership the earnings or profits indiscriminately obtained by either of the spouses during the marriage shall belong to the husband and the wife, share and share alike, upon the dissolution of the marriage.
>
> ART. 1401: To the conjugal partnership belong:
>
> 1. Property acquired for a valuable consideration during the marriage at the expense of the partnership property,

whether the acquisition is made for the partnership or for one of the spouses only.

2. That obtained by the industry, salaries, or work of the spouses or of either of them.

3. The fruits, income, or interest collected or accrued during the marriage, coming from the partnership property, or from that which belongs to either one of the spouses.

The husband has the exclusive administration or the community property, and may hypothecate or alienate it as he chooses (but not with malice of fraud). The wife's interest "seems to be a *mere expectancy* during coverture" (Ballinger, § 5, p. 29).

In the present case the Court found the following fact:

> 2. "The marital partnership beginning at the time of said marriage continued until said parties were divorced by the decree of the Supreme Court of Porto Rico on the ninth day of June, 1902, for complainant's adultery" (Rec., p. 108).

Under the older law the guilty wife was not entitled to recover her share of the community property:

> "The wife forfeits her matrimonial gains when she has been guilty of adultery."
>
> Ballinger, Community Property, § 5, p. 20.

See also,

> Schmidt, Civil Law of Spain and Mexico, Art. 68, citing Partid. l. 15, T. 17, P. 7.

Under the Civil Code the harshness of this older law is somewhat mitigated, but the guilty wife is

not permitted to sue for her share of the community property, the husband retaining his right to the administration of such property, and even of the wife's separate property (see Civil Code, Articles 73 and 1435).

The dissolution of the marriage partnership, and the separation of the community property are particularly provided for in Articles 1417 to 1444 of the Civil Code:

> "ART. 1417. The conjugal partnership expires on the dissolution of the marriage or when it is declared void. * * *
>
> "The conjugal partnership shall also terminate in the cases mentioned in Article 1433."
>
> "ART. 1433. The husband and the wife may request the separation of the property, and it shall be decreed, whenever the *spouse of the plaintiff* should have been condemned to a penalty which includes civil interdiction, or should have been declared an absentee, or *should have given cause for divorce.*"

The "dissolution of the marriage," referred to in Article 1417, is a dissolution arising from the death, or from the official declaration of the presumption of the death, of one of the parties (Art. 52: Marriage is *dissolved* by the death of one of the spouses. Art. 104: Divorce *only* produces the suspension of the life in common of the spouses). Thus, in the words of *Manresa, Codigo Civil Española*, Vol. IX., p. 674, Art. 1417, the conjugal partnership expires only after the happening of one of the following facts:

1. Death of one of the spouses.
2. Declaration of presumption of death.
3. Nullification of the marriage.
4. Requesting and obtaining the separation based upon

(*a.*) Civil interdiction of one of the spouses;

(*b.*) Declaration of absence;

(*c.*) Decree of divorce.

Facts 1, 2, 3, 4*a* and 4*b* are not present in this case.

We shall show that fact 4*c*, "requesting and obtaining the separation based upon decree of divorce," is not present.

Article 1433, insofar as it bears on divorce, reads as follows:

> "The husband and the wife may request the separation of the property, and it shall be decreed, *whenever the spouse of the plaintiff should have * * * given cause for divorce.*"

That is to say *only the innocent spouse may petition for the separation of property;* and separation of the partnership and liquidation of the property may take place only after a judicial decree to that effect has been rendered upon such petition:

> "ART. 1432. In the absence of a specific declaration in the marriage contract, the separation of the property of the spouses, during the marriage, shall not take place except by virtue of a judicial decree, except in the case prescribed by Article 50."

[In this case there was no "specific declaration," Rec., p. 1. 108; and the provisions of Article 50 do not apply.]

Manresa, Codigo Civil Español, Vol. IX., p. 769, says, in discussing this point:

> "(*B.*) Procedure: Now then, neither the civil interdiction, nor declaration of absence, nor the decree of divorce produce, by themselves, the separation of goods of the marriage. The law awaits, before everything, the wish of the innocent or present spouses, and concedes

them this right, so that they may, of their own free will, make use of it or not, petitioning for it or not doing so; but, in every case, there still must be a solemn declaration by the Court of the authority, publicity and necessary justice of so important and transcendent a fact, in order that there shall be produced the extraordinary effect of such a determination.

"*The desire of the present or innocent spouse, by itself, is therefore ineffective; the will or decree of the tribunals by itself is not effective*, no matter how grave the acts or causes which may give a motive to such a separation. *The interested party must petition for it and the Courts must decree it.*"

It is absolutely clear that no Court can, under the laws of Porto Rico, declare the separation of property, even after a divorce has been granted, *except upon the petition of the innocent spouse.* Without such petition the Court would be without jurisdiction to declare the separation of property, and its acts, looking to such separation, would be void.

As by Sec. 7 of the Foraker Act (Chap. 191, Laws of 1900, 31 Stat. L., pp. 77–79), it is provided "that the laws and ordinances of Porto Rico now in force shall continue in full force and effect," &c.; these Code provisions are binding upon the United States District Court for Porto Rico.

The United States District Court for Porto Rico can therefore take jurisdiction of a suit insofar as the same involves the separation of community property only when the plaintiff alleges and proves that the marriage has been annulled, or that the other spouse is dead, or legally presumed to be dead, or has been condemned to a penalty which includes civil interdiction, or has been declared an absentee, or has given ground for divorce. Not only was not one of these jurisdictional facts proven in this case,

but, on the contrary, it was found that the plaintiff gave the ground for divorce.

The Court below was therefore without jurisdiction to declare a separation of the community property, and its judgment for $13,750 is therefore void.

If it should be argued that the entire question relating to the separation of the community property must be settled by the law of France, as the spouses are French citizens, we would reply that the French law has not been proven in this case.

Respectfully submitted,

FRITZ V. BRIESEN,
Of Counsel for Appellants.

NEW YORK, October 29, 1906.